

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-218306.2 **DATE:** September 30, 1985
MATTER OF: Tritan Corporation

DIGEST:

1. Where protester raises same allegations, in two successively-filed protests, and those allegations are disposed of by a GAO decision issued in response to first protest, but before second protest is filed, second protest is treated as a request for reconsideration of the allegations, and is denied to the extent that protester offers no new facts or legal arguments not previously considered.
2. Second request for reconsideration of GAO's decision not to review contracting agency's negative determination with respect to protester's responsibility is denied where new information does not change the fact that protester was not in line for award.
3. Contractor's compliance with contract certification is a matter of contract administration, not subject to GAO review.

Tritan Corporation protests the Department of the Navy's contract award for water blasters to Harben, Inc., under request for proposals (RFP) No. N00140-84-R-0071, a total small business set-aside.

The history of Tritan's previous protests regarding the RFP is contained in our decision, Tritan Corp., B-218306, May 24, 1985, 85-1 CPD ¶ 601 at 1-2. We issued that decision prior to our receipt of Tritan's instant protest, filed here on May 31, 1985, but Tritan apparently did not receive our decision until after the instant protest was filed. In our decision of May 24, 1985, we declined to consider Tritan's allegations regarding the Navy's comparative determinations of offeror responsibility and improper Navy conduct in allegedly pressuring Tritan to increase its proposal price, noting that Tritan was, in essence, requesting a reconsideration of our prior denial of these allegations without specifying any errors of law or any information

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that we had not already considered. We also dismissed: (1) as a matter for resolution with the Small Business Administration and beyond our jurisdiction, Tritan's allegation that Harben was ineligible for award because of its foreign affiliation and that it was offering foreign products; (2) as a matter of contract administration beyond our jurisdiction, Tritan's allegation that the end products supplied by Harben failed to comply with its certification regarding domestic content and therefore purportedly violated the Buy American Act, 41 U.S.C. § 10(a)-(d) (1982); and (3) as untimely, Tritan's allegations that the RFP improperly required foreign products and that the Navy failed to give Tritan timely preaward notice of the award to Harben.

In its instant protest, Tritan again raises several of the same allegations, since disposed of by our decision of May 24, 1985. In this regard, we treat Tritan's latest protest as a request for reconsideration of these allegations. We deny its request for reconsideration since, except as discussed below, Tritan offers no new facts or legal arguments which were not previously considered. See GAO Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1985).

Tritan asserts that it has secured new information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a) (1982), "illustrating the prejudicial treatment of the Navy pre-award survey team in their evaluation of Tritan . . . compared to Harben" Again, we treat this as a request for reconsideration of our denial of Tritan's original request regarding the Navy's negative responsibility determination since it asks us to review the same matter. Although not stated by Tritan, for the sake of argument, we will assume that Tritan diligently pursued the release of this information and that Tritan timely filed the instant request, not later than 10 days after the basis for reconsideration was known, as required by our regulations. See 4 C.F.R. § 21.12(b). In support of its allegation of prejudicial treatment, Tritan cites allegedly derogatory statements contained in the preaward survey report relating to the quality of Tritan's packaging program. As we stated in our earlier denial, however, the propriety of the Navy's negative determination with respect to Tritan's responsibility is academic since, due to an increase in its price, Tritan was no longer in line for award. Tritan Corp., B-218306, supra, at 2. While Tritan also furnishes a FOIA-obtained copy of the Navy's tabulation of best and final offers, which Tritan asserts shows that it was at one time the low offeror in line for award, we have already held that Tritan has failed to show any impropriety on the part

of Navy contracting officials resulting in Tritan's revised, higher-priced proposal. Tritan Corp.--Reconsideration, B-216994.2, Feb. 4, 1985, 85-1 CPD ¶ 136 at 2. Therefore, we deny Tritan's request that we reconsider these issues again.

Tritan also alleges that the Navy failed to disclose that its contract with Harben was for the purchase of foreign made parts, as allegedly required by the Federal Acquisition Regulation, 48 C.F.R. § 25.202(c) (1984). In support of Tritan's allegation that Harben will supply foreign made parts, Tritan furnishes a report based on its own investigation. We previously noted, however, that Harben certified in its offer the domestic nature of its products. Compliance with that certification is a matter of contract administration, not subject to our review. Tritan Corp., B-218306, supra, at 3.

Tritan also argues that we erred in citing 4 C.F.R. § 21.2(a)(2) in our dismissal notice of May 17, 1985. We note first that the dismissal notice cited by Tritan, B-218443.2, pertains to a different solicitation, RFP N00600-84-R-5453. Second, we call Tritan's attention to the fact that we have issued new Bid Protest Regulations, applicable to protests filed after January 14, 1985, to which we correctly referred in the dismissal notice.

for *Seymour E. Evers*
Harry R. Van Cleve
General Counsel